

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

OMAR ALI, an individual, and KHALID
MOHAMED, an individual, and MOHAMUD
JAMA, an individual,

Plaintiffs,

vs.

MENZIES AVIATION, INC. , a foreign business
entity, and JOHN MENZIES PLC, a foreign
limited liability company,

Defendants.

Case No. 2:16-cv-262 RSL

**DECLARATION OF DUNCAN C.
TURNER IN SUPPORT OF
MOTION FOR CLASS
CERTIFICATION AND FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Duncan C. Turner deposes and states:

1. I am lead counsel for the plaintiff in this action. I am making this declaration in support of Stipulated Motion to Lift Stay and for Certification of Settlement Class and for Preliminary Approval of Class Action Settlement. I have personal knowledge of the matters stated herein and am competent to testify as to the same.

2. This action was originally filed in King County Superior Court on January 20, 2016. A First Amended Complaint adding two additional plaintiffs was filed the next day. The Defendants (collectively, "Menzies") removed the case to federal court on February 22, 2016. On March 14, 2016, the parties filed a stipulated motion for a stay in order to pursue settlement options which the Court granted on March 16.

1 3. A key factor prompting the parties to engage in early mediation was a mutual
2 arbitration agreement and class action waiver that Menzies and all of the putative class members
3 entered into as a condition of their employment prior to the commencement of the litigation.

4 4. One aspect of evaluating and investigating this case is consideration of the
5 alternative of the class members pursuing individual actions in arbitration. A primary
6 consideration was whether a substantial portion of the class would actually pursue their claims,
7 and certain demographic factors of the class suggested that this was unlikely. For those who did
8 pursue their claims, the process would likely be highly inefficient. For a large number of
9 individual lawyers to research, brief, and oppose the complex preemption defense in individual
10 arbitration proceedings, plaintiffs' counsel estimates that over 100 hours would be required.
11 Even for counsel that understands and have briefed the common legal issues, mounting and
12 presenting each arbitration would require an estimated 45 to 50 hours of attorney and paralegal
13 time. On the other side, the defense costs would likely be commensurate. I believe both sides
14 recognize the inefficiency that this would present in the instant case.
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16 5. Many of the class members are recent immigrants with limited command of the
17 English language and little or no experience with (or comprehension of) the workings of the
18 U.S. legal system. Plaintiffs' counsel believes that, absent a class-wide settlement, many of the
19 potential Settlement Class Members would go uncompensated due to their inability to
20 effectively pursue individual claims.
21

22 6. To determine the size of the class members, the burden of identifying the
23 members, and the calculation of their aggregate damages, the plaintiffs sought and Menzies
24 provided the relevant payroll records from which can be derived the identity of class members,
25 the number of hours worked, and various rates (straight time, overtime, holiday, etc.) at which
26

1 they were actually paid. From this data, plaintiffs' counsel developed a damages model to
2 reflect the amounts that would have been paid to each employee at the base rate required by the
3 Ordinance and the aggregate value of damages of the class, which we calculated to total
4 \$8,183,965.71.

5 7. The parties engaged in mediation with attorney Louis D. Peterson on June 8, 2016.
6 After a full day of negotiations, the parties reached the Conditional Settlement Agreement that
7 is the basis this motion. The settlement establishes an \$8,185,000 fund that we calculate
8 represent slightly more than 100% of the difference between wages paid to the putative class
9 and the minimum wage set by the Ordinance during the class period (January 1, 2014 to
10 February 14, 2016. The class size, according to Menzies' employment records consists of 738
11 claimants (past and current employees). The average recovery (before allocation of attorneys'
12 fees, costs, and an award to class reps) is \$11,090.79 per class member. The range between the
13 lowest and highest recovery will be determined by the relative number of hours worked by
14 particular class members. As an additional benefit to the class, all costs of administration will
15 be borne by Menzies and not the class.
16

17 8. The Conditional Settlement Agreement provides that, should 101 or more class
18 members opt out of the Class, Menzies shall have the option of reopening negotiations of the
19 settlement.
20

21 9. We are seeking appointment of Badgley Mullins Turner PLLC and the Law Office
22 of Daniel R. Whitmore as class counsel. Mr. Whitmore has filed a separate declaration
23 regarding his background and qualification. Those of me and my firm are below.
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25
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1 10. I am the managing member of Badgley Mullins Turner PLLC, counsel of record in
2 this matter, and I have served in that position for over 12 years. Prior to joining my current
3 firm, I was an attorney with the Bogle & Gates law firm in Seattle.

4 11. I am admitted to practice before this court and am a member in good standing of
5 the bars of the State of Washington and (in an inactive status) the State of Mississippi. I am
6 also admitted to practice in the Eastern District of Washington; the District of Colorado; the
7 U.S. Court of Federal Claims; the U.S. Courts of Appeal for the Fifth, Ninth, and Federal
8 Circuits; the U.S. Tax Court; and the Court of International Trade. I have been “AV” rated by
9 my peers in Martindale Hubbell in every year in which I have been eligible (approximately 20
10 years). I have been selected as a Washington “Super Lawyer” by Thomson Reuters in the years
11 2014, 2015 and 2016.
12

13 12. I received my undergraduate degree (Bachelor of Science) from the United States
14 Military Academy at West Point, N.Y., in 1974. I received a Juris Doctor degree (Magna Cum
15 Laude) from the University of Mississippi in 1990 and concurrently was awarded a Masters of
16 Business Administration degree.
17

18 13. Badgley Mullins Turner PLLC (“BMT”) is a Seattle-based law firm with a broad
19 practice that focuses on complex civil and commercial litigation with an emphasis on business
20 disputes, employment claims, antitrust litigation, and intellectual property litigation. BMT has
21 recent experience acting as co-counsel in the following class actions/putative class actions and
22 shareholder derivative cases:

23	Wick v. Twilio, Inc.	Western Dist. Washington	2016
24	Israel v. Diamond Parking Svc., Inc.	Western Dist. Washington	2016
25	DesJardins v. USHEALTH Advisors, LLC	Western Dist. Washington	2016
26			

Emerson v. Premera Blue Cross	Western Dist. Washington	2015
Barovic v. Ballmer (Microsoft)	Western Dist. Washington	2014
Bessent v. Lee (L&L Energy)	King County, Washington	2013
Rinky Dink, Inc. v. Electronic Merchant Sytems, Inc.	Western Dist. Washington	2013
Weinstein v. Kirkman	Western Dist. Washington	2013
Simpson v. Inter-con Security Systems, Inc.	Western Dist. Washington	2012
Judd v. AT&T, Inc.	King County, Washington	2012
In re Soda Co. Derivative Litigation	King County, Washington	2007

Additionally, I am currently lead counsel in the following putative class actions involving the failure of employers to abide by the City of SeaTac minimum wage ordinance:

Pending in U.S. District Court, Western District of Washington

Eicher v. Advantage OPCO et al	2:16-cv-00932 JLR
Hussein et al v. Air Serv Corporation	2:16-cv-00278 RSL
Hufune et al v. Bags, Inc.	2:16-cv-00265 RSL
Abdi v. Avis Budget Group, Inc. et al	2:16-cv-00421 RSL
Jesse et al v. DAL Global, Inc.	2:16-cv-00599 RSL
Ogawa et al v. Dufry AG et al	2:16-cv-00841 RSL
Jama et al v. GCA Services Group, Inc.	2:16-cv-00331 RSL
Jama et al v. Golden Gate America LLC	2:16-cv-00611 RSL
Hirsi v. The Hertz Corporation	2:16-cv-00333 RSL
Nugussie et al v. HMS Host North America et al	2:16-cv-00268 RSL

1 Muse v. Huntleigh USA Corporation 2:16-cv-00357 RSL

2 Ali et al v. Menzies et al 2:16-cv-00262 RSL

3 Abdi et al v. Prospect International Services Inc. 2:16-cv-00372 RSL

4 Allen, et al. v. Flight Services & Systems, Inc. 2:16-cv-01137 RSL

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6 **Pending in King County Superior Court**

7 Ahmed et al v. Aircraft Service International Group et al 16-2-01662-6 SEA

8 Ali et al v. ATZ, Inc. et al 16-2-10366-9 SEA

9 Ahmed v. Fox Rent-A-Car, Inc. 16-2-03084-0 SEA

10 Eli v. Hanjin Global Logistics et al 16-2-03259-1 SEA

11 Ali v. Consolidated Aviation Services, Inc., et al 16-2-06716-6 SEA

12 Judd et al v. Swissport USA, Inc. 16-2-04371-2 SEA

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14
15 14. BMT has invested a significant amount of time and expense in investigating the
16 claims of the potential class members and in understanding the social, cultural, and economic
17 factors that relate to the potential class.
18

19 15. Counsel began investigating the incidence of employers paying (or not paying) the
20 minimum wage in August of 2015 when the Washington Supreme Court issued its decision in
21 the Filo Foods case. Numerous inquiries from potential class members and leaders in the
22 community led counsel to evaluate the viability of the claims, the strengths of the arguments for
23 and against the enforceability of the Ordinance, and issues relating to the utility and viability of
24 resolution of these claims through class action litigation. Counsel continued to field inquiries
25 from employees throughout the remainder of 2015, expecting that employers would, either at
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1 the end of the next pay period or by the end of the year, remit to the employees the unpaid
2 wages. When that did not occur, plaintiff's counsel commenced litigation against a number of
3 employers, including Menzies.

4 16. BMT is prepared to continue to make the requisite investments of time, talent and
5 money to ensure a competent and professional prosecution of the instant case.

6 17. As noted above, Menzies has agreed to bear all of the costs of administering the
7 class settlement. It has selected Simpluris, Inc. as its preferred third party administrator.
8 Simpluris describes itself on its website (www.simpluris.com) as follows:
9

10 Simpluris Inc. is a national class action settlement administrator established in
11 2007. With a strong focus on customer service and utilizing proprietary
12 systems and innovative solutions, Simpluris has built a first-rate reputation for
13 handling cases. Simpluris focuses exclusively on class action cases, providing
14 a wide range of services including case planning, database management, pre-
15 certification mailings, case notification, case administration, disbursement and
16 tax reporting. Whether it is a straightforward mailing or a multi-state
17 distribution with several million members, we will administer your case with
18 efficiency and accuracy.

19 In 2011, Simpluris was recognized by Inc. Magazine as number 171 on the
20 annual Inc. 500 list which recognizes the nation's fastest growing private
21 companies in America. Our experienced team has administered over 1,400
22 class action settlements and noticing procedures.

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24 Simpluris has extensive experience in the realm of labor and employment
25 class action settlements with a niche in Wage and Hour. Employment lawsuits
26 arise on behalf of mistreated employees with claims ranging from systematic
and proven workplace discrimination, illegal hiring and promotions, illegal
retaining, and wrongful termination practices, unpaid unemployment benefits
and similar situations where employees received less than their expected wage
for work performed.

Wage-and-hour disputes typically carry with them complicated calculation
processes of recorded work hours or payroll history data. These situations
carry with them exports or copies of information that is often manually
handled and parsed, which can be a time consuming and expensive
proposition. As just one part of **LiveCase™**, Simpluris can semi and fully
automate the digital scanning, data input, isolation, extraction, and mining of
data that would feed the calculation process. Our labor and employment case

managers and administration teams are supported by this state-of-the-art proprietary technology to ensure accuracy and efficiency in all aspects of our administration, from noticing and claims processing, to calculating and disbursing payment awards.

I have spoken to a Simpluris representative who assured me that the company handles all aspects of claims processing from giving notice through tax reporting. It appears that Simpluris, Inc. is a reasonable choice to act as the Settlement Administrator.

18. Plaintiffs will be seeking a modest incentive award of \$2,000 per plaintiff. The plaintiffs in the case were not deposed, however their contributions were substantial. As low wage workers, they feel (rightly or not) vulnerable to retaliation or other adverse consequences that an employer might bring against a named plaintiff. Despite these misgivings, these workers willingly undertook to represent 736 of their fellow workers.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 5th day of August, 2016.

/s/ Duncan C. Turner
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